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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,159	02/17/2004	Joseph DeMeo	KN P 0155	1270
42016	7590	09/25/2007	EXAMINER	
KENSEY NASH CORPORATION 735 PENNSYLVANIA AVENUE EXTON, PA 19341			CHEN, VIVIAN	
			ART UNIT	PAPER NUMBER
			1773	
			MAIL DATE	DELIVERY MODE
			09/25/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/780,159

Applicant(s)

DEMEO ET AL.

Examiner

Vivian Chen

Art Unit

1773

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 05 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☒ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see Detailed Advisory Action. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-4, 23, 24, 28-31 and 33-40.  
Claim(s) withdrawn from consideration: 22 and 41.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see Detailed Advisory Action.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Vivian Chen  
Primary Examiner  
Art Unit: 1773

**DETAILED ADVISORY ACTION**

1. Claims 5-21, 25-27, 32 have been cancelled by Applicant.

***Response to Proposed Amendments***

1. The proposed amendments will **NOT** be entered because they raise new issues that would require further consideration and/or search. The newly added claim limitations with respect to the presence of a common longitudinal axis and a common axis of orientation have not been previously presented or claimed.

1. The proposed amendments will **NOT** be entered because they raise new issues that would require further consideration and/or search and because they raise the issue of new matter because there is a lack of support in the specification as originally filed with respect to requiring a common axis of orientation.

***Claim Rejections - 35 USC § 103***

2. Claims 1-4, 23-24, 28-31, 33-40 remain rejected under 35 U.S.C. 103(a) as being unpatentable over NAKAMURA ET AL (US 2003/0146541), in view of BURKHEAD ET AL (US 2001/0004693),

because the proposed amendments have **NOT** been entered.

***Response to Arguments***

3. Applicant's arguments filed 9/5/2007 have been fully considered but they are not persuasive.

(A) Applicant's arguments with respect to the presence (or lack thereof) of a common longitudinal axis featuring a common axis of molecular orientation are deemed moot because the proposed amendments have **NOT** been entered.

(B) Applicant argues that the phrase “a longitudinal axis” inherently references to a single or common longitudinal axis. However, the Examiner is not persuaded because the term “a longitudinal axis” by itself does not inherently require that the longitudinal axis of the head and the longitudinal axis of the shank portion be the one and the same. The phrase “arranged on a longitudinal axis” may be reasonably interpreted as simply specifying that each portion has a distinguishable “lengthwise” direction.

(C) Applicant argues that BURKHEAD fails to disclose a device wherein the head and the shank are arranged on a longitudinal axis. As an initial matter BURKHEAD is primarily relied upon to illustrate that it is well known in the art to form implantable articles with different degrees of orientation in different regions. With respect to Applicant's argument that the head portion of BURKHEAD is not “arranged on” the longitudinal axis, while the head portion *contains* an element which deviates from the overall longitudinal axis of the device, that does not obviate the fact that the head portion as a whole is situated at the tip of the shank, and therefore may be reasonably considered to be “arranged on” the overall longitudinal axis of the device (i.e., placed in a position in the lengthwise direction). Accepting Applicant's interpretation of “arranged on a longitudinal axis” would mean that absolutely no part or element of the head

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portion can deviate from or have an axis different from the longitudinal axis, thereby excluding any device in which the head portion has a diameter is greater than its shank diameter, because according to Applicant's particular interpretation, such head portions are not arranged on a longitudinal axis with the shank portion. For example, Applicant's interpretation would appear to preclude devices having widened head portions as denoted by reference number 6 in Applicant's own Figures.

### *Conclusion*


4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivian Chen whose telephone number is (571) 272-1506. The examiner can normally be reached on Monday through Thursday from 8:30 AM to 6 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney, can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

The General Information telephone number for Technology Center 1700 is (571) 272-1700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 18, 2007

  
Vivian Chen  
Primary Examiner  
Art Unit 1773